

09.03.2026  
Court No.13  
Item No.17  
AP/sp

**FA 70 of 2013  
(FAT 129 of 2011)**

**Pradip Kumar Maity  
Vs.  
Shrimati Shyama Rani Maity & Ors.**

Mr. Rabindranath Mahato  
Mr. Aritra Shankar Ray

...For the Appellant.

Mr. Indranil Nandi  
Mr. Deba Prasad Samanta  
Mr. Sayak Konar

...For the Respondent No.1.

1. The subject appeal is directed against a judgement and/or decree dated 10<sup>th</sup> December, 2010 passed by the learned Civil Judge, Senior Division, Tamluk in Title Suit No.78 of 2001.

2. The brief facts relevant to the case are that the appellant/defendant is a co-sharer along with the respondents in respect of the suit property. They are family members.

3. The appellant/defendant had sold his share of the property to a third party. The respondents were not notified or made aware of the same prior to such sale. When the respondents came to know of the sale, they sought to exercise a right of pre-emption to purchase the property sold to the third party. The defendant/appellant in the Trial Court contended as has been contended before this Court that since he has sold the property to a third party, the right of pre-emption would accrue only

when the third party sues for partition of the purchased share in the property and claims possession thereof.

4. The Trial Judge disagreed with the appellant and decreed the suit of the respondent.

5. Assailing the said judgement, Mr. Rabindranath Mahato, learned counsel for the appellant would argue that Section 22 of the Hindu Succession Act, 1956, in terms of the several dicta of the Supreme Court must be given a plain reading and interpretation. Such plain reading would indicate that the right of pre-emption under Section 22 of the Hindu Succession Act, 1956, of a co-sharer in the property sold by another co-sharer, could at best accrue when the third party purchaser sues for partition and/or possession of the property.

6. He would further argue that once the property is sold, the right of pre-emption would stand extinguished. It is next argued that the other co-sharers, who are willing to buy the property, are not remediless as they can still claim pre-emption in terms of Section 4 of the Partition Act, 1893 and Section 8 of the West Bengal Land Reforms Act, 1955.

7. Analogy is drawn by Mr. Mahato from the dicta of the Supreme Court in the case of ***Gautam Paul Vs. Debi Rani Paul & Ors.*** reported in ***(2000) 8 SCC 330***. It was held by the Supreme Court in the context of Section 4 of the Partition Act that the right to seek pre-emption

under Section 4 would accrue only when the third party purchaser of land sues for partition.

8. This Court is of the prima facie view that while the decision was rendered in a case of a right of pre-emption under Partition Act, the provisions of Section 22 of the Hindu Succession Act, 1956 did not come up for interpretation before the Supreme Court in the said decision.

9. Reference is next made to a decision of the Single Bench of the Karnataka High Court in the case of **Smt. Ammajamma Vs. Smt. Mahadevamma & Anr.** reported in **ILR 1996 KAR 3499**. In the said decision it was held that a plain reading of the scheme of Section 22 of the Hindu Succession Act, 1956 would indicate that the right of pre-emption is extinguished by reason of the sale by a co-sharer to a third party transfer. This Court has serious reservations accepting the views of the Single Bench of the Karnataka High Court in this regard.

10. In support of the argument that a statute in its plain reading must be given effect to by Courts reliance is placed on the decision of the Supreme Court in the case of **Superintendence Company of India (P) Ltd. Vs. Krishan Murgai** reported in **(1981) 2 SCC 246** and the case of **Barasat Eye Hospital and Ors. Vs. Kaustabh Mondal** reported in **(2019) 19 SCC 767**.

11. In both the decisions it was held that when a provision of statute prescribes pre-deposit of the entire sale consideration, to entitle a person to seek pre-emption, inter alia, under the West Bengal Land Reforms Act, 1955 the same is mandatory. A part deposit or waiver of pre-deposit diluting the pre-condition under the statute cannot be permitted. This Court is in complete agreement with the dicta in the aforesaid decisions. The same, however, will not have a binding effect in the case of Section 22 of the Hindu Succession Act, 1956.

12. It is now well-settled as a proposition of law that, the ratio of any decision must be seen in the factual context of a case. Reading observations of the Supreme Court as binding precedents even if it is ratio de hors the facts and the applicable law could lead to disastrous situations.

13. In the instant case, it is seen that Section 22 of the Hindu Succession Act, 1956 provides as follows:-

**“22. Preferential right to acquire property in certain cases.—** (1) Where, after the commencement of this Act, an interest in any immovable property of an intestate, or in any business carried on by him or her, whether solely or in conjunction with others, devolves upon two or more heirs specified in class I of the Schedule, and any one of such heirs proposes to transfer his or her interest in the property or business, the other heirs shall have a preferential right to acquire the interest proposed to be transferred.

(2) The consideration for which any interest in the property of the deceased may be transferred under this section shall, in the absence of any agreement between the parties, be determined by the court on

application being made to it in this behalf, and if any person proposing to acquire the interest is not willing to acquire it for the consideration so determined, such person shall be liable to pay all costs of or incident to the application.

(3) If there are two or more heirs specified in class I of the Schedule proposing to acquire any interest under this section, that heir who offers the highest consideration for the transfer shall be preferred.

*Explanation.*— In this section, “court” means the court within the limits of whose jurisdiction the immovable property is situate or the business is carried on, and includes any other court which the State Government may, by notification in the Official Gazette, specify in this behalf.”

14. It is clear and explicit from the above that Section 22 of the Hindu Succession Act, 1956 confers on co-sharers a right of pre-emption of the share in the property or business of a family member. The expression proposing to acquire, implies clear and unambiguous communication of proposal to the other co-sharers of the property. If such notice is not read as to the section, it would be rendered toothless. The right conferred on the Section would be defeated and rendered otiose. If third party rights are created in a property, there would be severe complications and multiplicity of proceeding. An outsider would always offer a rate which the co-sharers may not be able to match. He may also seek or get possession of the property creating disharmony.

15. Therefore, to argue that once another family member surreptitiously effects sale of his portion of the property or business to a third party the right of pre-emption of other co-shares is extinguished and can only be revived if the third party seeks partition, is

preposterous. Such interpretation would render Section 22 of the Hindu Succession Act, 1956 nugatory and extinguish guaranteed statutory rights.

16. The ancillary to the aforesaid argument advanced by Mr. Mahato, learned counsel for the appellant that rights under Section 22 of the Hindu Succession Act, 1956 would arise only when the appellant proposes to transfer the property to third party is equally unacceptable. He submits that any right of pre-emption under Section 22 of the Hindu Succession Act must be exercised and enforced prior to the sale in favour of the third party. He submits that since Section 22 of the Hindu Succession Act does not conceive of any notice to the co-sharers, once sale is completed in favour of a third party the right of pre-emption will get extinguished.

17. This Court once again notes that the aforesaid interpretation of the learned counsel for the appellant is equally preposterous and has the effect of defeating the object and purpose of Section 22 of the Hindu Succession Act. The interpretation of Section 22 of the Hindu Succession Act by the legislature is with the definite and specific purpose. The purpose being that as far as possible, the family properties remain with family members and intervention of third parties and transfers thereto must be only as a last resort and that too when other family members are not in a position to purchase the same or even make an offer therefor.

18. Unless a co-sharer comes to know that another sharer is proposing to sell a portion of the property to a third party, there is no way on earth that the other co-sharers will come to know of approval of their rights under Section 22 of the Hindu Succession Act or to formally exercise the same to restrain the other co-sharers from selling the property to a third party. Once third party rights are created, several complications would arise. The third party rights are created and wedges are thrown between family members giving rise to unnecessary disputes, acrimony and discord.

19. It is essentially with a view to avoid such discord and dispute that Section 22 of the Hindu Succession Act was introduced in the 1956 Act. By reason of notice of the proposed sale to third party, the other family members are put at caution and informed of the co-sharers' intention. It is then that the existing co-sharers may exercise a right of pre-emption to either match the monetary consideration expected by the selling co-sharers or have the same valued by a Court of law to compensate adequately the co-sharer willing to part from the family property.

20. Having regard to the above, this Court is of the view that the impugned judgment, dated 10<sup>th</sup> December, 2010, calls for absolutely no interference.

21. FA 70 of 2013 (FAT 129 of 2011) shall stand dismissed. Consequently all connected pending applications, if any, are also dismissed.

22. There shall be no order as to costs.

23. All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

**(Rajasekhar Mantha, J.)**

**(Rai Chattopadhyay, J.)**